

United States District Court

for the
Western District of New York

United States of America

v.

Case No. 19-MJ- 728

FRANK SALERNO

Defendant

CRIMINAL COMPLAINT

I, CHRISTOPHER TOSCANO, Task Force Officer with the United States Federal Bureau of Investigation, the complainant in this case, state that the following is true to the best of my knowledge and belief:

Between on or about June 21, 2019 and November 26, 2019, in the Western District of New York, the defendant **FRANK SALERNO** violated Title 18 U.S.C. § 2251(a), an offense described as follows:

The defendant did knowingly employ, use, persuade, induce, entice, and attempt to employ, use, persuade, induce and entice, a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, knowing or having reason to know that the visual depiction would be transported in interstate or foreign commerce, and which visual depiction was produced or stored using materials that had been mailed or transported in interstate or foreign commerce, in violation of Title 18, United States Code, Section 2251(a).

This Criminal Complaint is based on these facts:

SEE ATTACHED AFFIDAVIT OF CHRISTOPHER TOSCANO, T.F.O., F.B.I.

Continued on the attached sheet.

Christopher Toscano

Complainant's signature

CHRISTOPHER TOSCANO, T.F.O., F.B.I.

Printed name and title

Mark Pedersen

Judge's signature

Sworn to before me and signed in my presence.

Date: December 17, 2019

City and State: Rochester, New York

MARK W. PEDERSEN, United States Magistrate Judge

Printed name and title

AFFIDAVIT IN SUPPORT OF A CRIMINAL COMPLAINT

STATE OF NEW YORK)
COUNTY OF MONROE) SS:
CITY OF ROCHESTER)

I, CHRISTOPHER TOSCANO, being duly sworn, depose and state:

1. I am a sworn Task Force Officer with the Federal Bureau of Investigation and am a Deputy with the Monroe County, NY, Sheriff's Office. I have been a member of the Monroe County Sheriff's Office since February of 2012, and have been assigned to the FBI, Child Exploitation Task Force, since March of 2017. I am trained to investigate and have participated in investigations involving a wide range of local, state, and federal criminal violations. In my position with the FBI Child Exploitation Task Force, I am responsible for investigating crimes against children, including the production of child pornography, in violation of Title 18, United States Code, Section 2251(a).

2. The information contained in this affidavit is based upon my personal knowledge and observation, my training and experience, conversations with other law enforcement officers, and my review of documents and records.

3. As set forth below, there is probable cause to believe that FRANK SALERNO, did knowingly employ, use, persuade, induce, entice, and attempt to employ, use, persuade, induce and entice, a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, while knowing or having reason to know that the visual depiction would be transported in interstate or foreign commerce, and which visual depiction

was produced or stored using materials that had been transported in interstate or foreign commerce, in violation of Title 18, United States Code, Section 2251(a).

4. Because this affidavit is submitted for the limited purpose of establishing probable cause to secure a criminal complaint, I have not included every detail of the investigation. Rather, I have set forth only the facts that are necessary to establish probable cause to believe that SALERNO did violate Title 18, United States Code, Section 2251(a).

BACKGROUND OF INVESTIGATION

5. On July 25, 2019, Cooperating Witness 1 (CW1) reported to law enforcement that his daughter (the Victim), a 14-year-old female located in Wayne County, in the Western District of New York, received sexually explicit communications on her Instagram account from Instagram user “franksalerno89.” CW1 stated that the Victim first began communicating with “franksalerno89” when the Victim was 13 years old, but that she had turned 14 by the time of the report.

6. CW1 copied the contents of the Victim’s Instagram account, to include her communications with “franksalerno89,” to a digital storage device, and provided it to me on July 26, 2019.

7. On July 27, 2019, I reviewed the contents of the Victim’s Instagram communications with “franksalerno89,” which took place between June 21 and July 23, 2019. The conversations initially involved neutral subjects, but became increasingly sexual in nature. For example, on June 23, 2019, franksalerno89 made statements during a conversation with the Victim, which included: “Kisses u deeper and deeper taking ur breath

away," "kisses your neck," "rubs your thigh," "grinds on you," "U say to put it in," "I stick it in slowly," "goes deep," and "cums."

8. On July 14, 2019, **franksalerno89** made the following statements to the Victim: "Show ur tummy more hunny, it's sexy," "Show me those legs hunny cause damn u got even more sexy" and "What about touching urself." Later on July 14, 2019, **franksalerno89** sent the Victim a video-chat request, to which the Victim responded "I can't video chat.. I want to but I can't.. my mother is still awake and she could come in," to which **franksalerno89** replied "Ugh send that pic again." **Franksalerno89** then engaged in the following conversation with the Victim:

Franksalerno89: "Feel me go in u," to which the Victim replied "Ok.."

Franksalerno89: "U feel it" to which the Victim stated "Yeah.."

Franksalerno89: "U scared" to which the Victim stated "A little."

Franksalerno89: "I go deeper," to which the Victim replied "I haven't done this in a while.. I'm scared.."

Franksalerno89: "Ur hand down there" to which the Victim stated "Yeah..".

Franksalerno89: "Show" to which the Victim stated "Hold on my mom walked in.."

Franksalerno89: "Ok", "Show me inside" and "Finger deep."

9. The Victim did not explicitly state her age during the conversations with **franksalerno89**, but made several comments, which indicated that she was a minor. For example, on June 22, 2019, **franksalerno89** asked the Victim "Can you video," to which the Victim responded "No, I'm hanging out with my dad." On June 26, 2019, the Victim stated "Hey I have to delete instagram so bye. Sorry." When the defendant asked "Why" the Victim

responded “My mom is making me, I’m sorry. I have to delete it now. Bye,” to which the defendant responded “Ugh.” On July 13, 2019, the Victim stated that she had a birthday coming up, and that “Mhm my mom is letting me dye my hair blue.” On July 13, 2019, while ending a conversation with the defendant, the Victim stated: “Ttyl, btw I’m not allowed to have my phone past 9pm.”¹ On July 14, 2019, the Victim stated “Hey sorry I was at a graduation party.” Later on July 14, 2019, when asked if she was alone, the Victim responded “No sorry my grandma is having me try on crop tops at a store rn,” to which the defendant replied “show me.” At that point in the conversation, the Victim sent the defendant several photographs depicting the Victim in a changing room, wearing jean shorts and several different crop tops. The Victim’s face is clearly visible in the pictures, and I believe that she clearly appears to be a minor. The defendant responded to the photographs taken in the store by saying “show me more tummy hunny” and “it’s sexy,” and “show me those legs hunny cause damn u got even more sexy.” Later on July 14, 2019, the Victim stated “sorry if it takes a little bit for me to answer. I don’t have my notifications on because I don’t want my mom to make me get rid of instagram again,” to which the defendant replied “its ok and I know u get turned on too when u see me pop up.” The Victim then stated “I’m not allowed to be on my phone past 9pm now so we aren’t going to be able to do that as much,” to which the defendant replied “we can if ur quiet.” The Victim then stated “My phone has to be in the living room plus it’s hard to be quiet” and “U always used to tell me to make noise.” The Victim also said “my breasts are off limits ok. I’ve never touched or done anything with them. I’m very insecure about them too,” to which the defendant replied “they are nice trust me.” The Victim then stated “I’m just really insecure about it.. plus no one has ever done anything

¹ “Ttyl” is an acronym for “Talk to you later.” “BTW” is an acronym for “by the way.”

with them" and "Please don't make me do anything with them..," to which the defendant said "relax."

10. Later on July 14, 2019, the defendant engaged in a conversation with the Victim concerning masturbation, in which the following exchange took place:

Franksalerno89: "What about u touching urself."

Victim: "Idk." (acronym for "I don't know")

Franksalerno89: "Do you like it."

Victim: "I still do it sometimes. . it's hard not to. ."

Franksalerno89: "I know but when we do it do you like it."

Victim: "Yeah depends on how hard u make me do it."

11. On July 30, 2019, CW1 gave verbal consent for the FBI to assume the Victim's identity on her Instagram account to further communicate with franksalerno89. Thereafter, an undercover agent (the UC), posing as the Victim, began to communicate with franksalerno89.

12. On July 31, 2019, the UC sent an Instagram message to franksalerno89 stating "Morning" and "Missed u," to which franksalerno89 responded "Hey." Shortly thereafter, franksalerno89 asked the Victim to talk to him "on the camera." When the Victim (UC) replied "My mom with me idk if I can," franksalerno89 stated "Ugh." The Victim (UC) then stated "ik I hate her just want to be left alone by her," to which franksalerno89 said "Hmm can u send me pics"? The Victim (UC) responded "Umm idk wut u want to see," to which franksalerno89 asked the Victim (UC) to send a photograph showing what the Victim was wearing.

13. In order to ensure that franksalerno89 was aware of the Victim's age, the UC indicated that she was 14 years old by stating "I thought once I turned 14 my mom would leave me alone more lol." Franksalerno89 acknowledged the Victim's age by responding "Kr" and "Ikr." ("Ikr" is an abbreviation for the phrase "I know, right"). Franksalerno89 then made a comment that the Victim should "stay at ur dads for good." Later in the conversation, franksalerno89 made the comment that the Victim should "come here to me."

14. Despite being told that the Victim was 14, franksalerno89 continued to engage in sexually explicit conversations with the Victim (UC). For example, on July 31, 2019, after he was told that the Victim was 14, the Victim (UC) stated that she was going to take a shower, to which franksalerno89 replied "Can u send me a pic from the bathroom." The Victim (UC) stated "Wut u want to see, only sending 1 though," to which franksalerno89 said "U naked." Franksalerno89 then proceeded to tell the Victim that he loved her, to which the Victim (UC) stated "Udnt care I'm only 14??" Franksalerno89 replied "Kisses no I will wait till ur 18 to physically kiss u."

15. As the conversation continued on July 31, 2019, franksalerno89 proceeded to ask the Victim (UC) for sexually explicit photographs. At one point, when asked what he wanted to see, franksalerno89 replied "yes legs first then tummy then ur fingers in ur pussy." Franksalerno89 then requested that the Victim masturbate, and made comments such as "just show me ur pussy then."

16. The conversation between franksalerno89 and the Victim (UC) continued through August 7, 2019. During that time, the conversation continued to be sexual in nature, despite the Victim (UC) making additional comments about the fact that the Victim was a

minor. For example, on August 6, 2019, franksalerno89 asked to talk to the Victim, to which the Victim (UC) replied that she was with her dad, but would be able to talk more after school started. The Victim (UC) then replied that she was entering the 9th grade, to which franksalerno89 stated "Proud of u," . . . "Cause ur growing up." The UC then stated "Ik I'm only 14 but my friends do way more stuff then I'm allowed to so not fair," to which SALERNO responded "I hear u."

17. During the conversations, franksalerno89 sent two photographs to the UC. One of the photographs had previously been posted on the public profile of the franksalerno89 Instagram account. The other depicted an adult male wearing glasses and a green shirt. Franksalerno89 also attempted to video-chat with the UC on at least one occasion. During that occasion, the user of the franksalerno89 account was visible to the UC. The UC observed that the user of the franksalerno89 account was the same person that was depicted in the photographs referenced above.

18. Based on the conversations between franksalerno89 and the Victim and UC, I obtained and served a federal search warrant on the Facebook.com and Instagram for the franksalerno89 Instagram account. On August 26, 2019 Facebook provided the contents of the franksalerno89 account, which I reviewed. Unlike the records provided by CW1, which only displayed the text of the conversations between franksalerno89 and the Victim, the records from Instagram also included photographs that were exchanged during the conversations. Based on my review, at least two photos that the Victim sent to franksalerno89 constitute child pornography as defined by Title 18, United States Code, Section 2256(8).

19. For example on July 14, 2019, franksalerno89 stated “Ur hand down there,” to which the Victim replied “Yeah..” Franksalerno89 then stated “Show,” to which the Victim stated “Hold on my mom walked in..” Following this, the Victim sent a photograph to franksalerno89 in which she is wearing what appears to be a green shirt with jean shorts. The Victim’s hand is inside of her shorts and she appears to be masturbating. In response, franksalerno89 stated “Show me inside” at which point the Victim sent another picture to franksalerno89 with her shorts pulled down and her hand touching her bare, exposed vagina. Franksalerno89 responded by saying “Finger deep” to which the Victim stated “Mhm..”. The conversation continues in which franksalerno89 says things such as “go deeper,” to which the Victim responded “it hurts a little.” Franksalerno89 then asks “U cum”? and “keep going.” The Victim ultimately responded “That’s as far as I can go” and “I’m gonna take my finger out.. this hurts.”

20. On October 23, 2019 I met with the Victim and showed her the images that were sent from her account to franksalerno89, to include the two child pornography images referenced above. The Victim confirmed that she produced the images of herself and sent them to franksalerno89 via Instagram at his request. The Victim further confirmed that she produced and sent the images from her home within the Western District of New York. Based upon my training and experience in the investigation of child pornography cases, the photographs constitute child pornography, as defined by Title 18, United States Code, Section 2256(8).

21. Utilizing a database available to law enforcement, I conducted a search for “Frank Salerno,” and identified a person with that name and a date of birth “XX/XX/1989”

residing in Massachusetts. A DMV search yielded a DMV photograph for Frank Salerno, DOB XX/XX/1989. The DMV photograph depicts the same male that is depicted in the public profile photographs on the [franksalerno89](#) account. The DMV photo also depicts the user of the [franksalerno89](#) account who was visible to the UC as described in paragraph 17 above. Based on the above, I coordinated with the Massachusetts State Police, who confirmed that Frank Salerno dob XX/XX/89 is currently serving a state term of probation, and resides at a particular address in Pittsfield, MA. The Massachusetts State Police contacted Salerno's probation officer who further confirmed Salerno's current address in Pittsfield, Massachusetts.

22. Based on the above, I assisted FBI Agents in the District of Massachusetts to obtain a search warrant for the defendant, Frank Salerno's home and digital devices.

23. On November 26, 2019, I assisted with the execution of a federal search warrant at SALERNO's address in Pittsfield, MA. SALERNO was present during the execution of the warrant, and I interviewed him with TFO Carlton Turner on the front porch of his residence. The defendant was not arrested, was never handcuffed, and was not retrained in any way. During the interview, I engaged in a ruse, in which SALERNO was told that the Victim was missing, and that law enforcement from New York had requested assistance in locating her. In response, SALERNO acknowledged that he was the owner and operator of the [franksalerno89](#) account, and admitted that he was the individual who had communicated with the Victim as described above. SALERNO stated that he had not spoken with the Victim in a while, and that he "almost called it in" himself. When confronted with the sexual nature of his conversations with the Victim, SALERNO first claimed that he did

not know the Victim's age. He then made statements that the Victim's parents would not allow her to use Instagram, that his relationship with the Victim was "just a fling," and that he and the Victim had feelings with one another "for a while," but that the victim was "young," and he eventually "collected [his] head finally, [his] common sense so then [he] was done." SALERNO indicated that communicated with the Victim from his home in Massachusetts.

24. I then proceeded to show SALERNO the two child pornography photographs depicting the Victim described in paragraph 19 above. When asked if he remembered receiving photographs, SALERNO said "ya I do remember." I then told SALERNO that he should not be communicating in this way with a 14 year old girl, and asked if he had communicated with any other minors. SALERNO denied communicating with any other minors in this fashion and reiterated that it was "just a fling" when referencing the Victim. I then confronted SALERNO with the communication between SALERNO and the UC in which the UC stated "Ik I'm only 14 but my friends do way more stuff then I'm allowed to so not fair." In response, SALERNO simply stated "I don't pay attention to much."

25. After the interview concluded, the warrant was executed at SALERNO's residence. At that time, SALERNO identified an LG smart phone, which SALERNO indicated was the device that he used to communicate with the Victim. The LG Cell Phone was then examined by an employee with the Berkshire County, MA, Sheriff's.

26. I reviewed the examination of the LG Cell Phone and observed approximately 50 images of the Victim in thumb cache. At least five of the images constitute child pornography depicting the Victim, as defined by Title 18, United States Code, Section

2256(8). Three of the images depict the lascivious exhibition of the Victim's bare vagina. Two of the images depict the Victim's bare vagina in which the Victim is seen masturbating. On December 3, 2019 I met with the Victim who confirmed that she produced the images of herself at her home in the Western District of New York, and that she sent the images to `franksalerno89` via Instagram at his request.

27. Instagram operates via the Internet, which is a means and facility of interstate and foreign commerce and the images described above were actually transported in interstate commerce, that is, from New York to Massachusetts. In addition, the defendant's LG cell phone bears the trade inscription "Made in Vietnam." Accordingly the visual depictions were also produced or stored using materials that had been shipped, mailed or transported in interstate or foreign commerce.

CONCLUSION

28. Based upon the fact that the defendant solicited and received child pornography from the Victim during his direct communications with her, and attempted to solicit additional child pornography from the UC posing as the Victim, there is probable cause to believe that FRANK SALERNO, did knowingly employ, use, persuade, induce, entice, and attempt to employ, use, persuade, induce and entice, a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, while knowing or having reason to know, that the visual depiction would be transported in interstate or foreign commerce, and which visual depiction was produced or stored using materials that had been mailed or transported in interstate or foreign commerce, all in violation of Title 18, United States Code, Section 2251(a).

Christopher Toscano
CHRISTOPHER TOSCANO
Task Force Officer
Federal Bureau of Investigation

Subscribed to and sworn before me
this 17 day of December 2019.

Mark Pedersen

MARK W. PEDERSEN
United States Magistrate Judge